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Federal Communications Commission
Office of the Secretary

April 16, 2007

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

INRE: Support the proposed merger between Sirius & XM

Dear Chairman Martin:

In 1948, the American public was introduced to the innovative vision Preston Tucker had for the future of ~~the~~ automobile. Aluminum engines, fuel injection, disk brakes, seat belts and other cutting edge technologies not seen outside the race tracks of the day would be made available to the American consumer via the Tucker 48.

Unfortunately for the American public, Preston Tucker and Tucker Automobile Company was opposed almost immediately by at least ~~two~~ of the "Big 3" automakers in Detroit, "The Senator from Detroit" Homer Ferguson and the Security and Exchange Commission (SEC). ~~After years of dogged persecution and millions of taxpayer's dollars spent, the opposition to Tucker prevailed.~~

While it would be inaccurate and unfair to attribute Tucker's failure solely to the efforts of the SEC, "The Big 3" and certain politicians, their ~~efforts~~ did play a large and significant role in keeping Tucker Automobile Company from getting off the ground.

Six years ago, the American consumer was introduced to satellite radio and in those ~~six~~ years, approximately 14 million Americans have ~~signed~~ up for this innovative service. Both Sirius and XM should be commended for their aggressive, ~~pro-consumer~~ approach to building the foundation of this emerging market.

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Following the model of other technology service providers, satellite radio consumers have enjoyed a breathtaking array of new services and innovations created by **both** Sirius and **XM**. Certainly, the competition between the two companies is partly responsible for the new services, innovations and content delivered, however to assume competition alone is responsible for these benefits is to misunderstand the very nature of innovation, technology and its consumers.

As you are aware, in February of this year, Sirius Satellite Radio and **XM** announced their plans to merge. **Not** surprisingly, the National Association of Broadcasters signaled their opposition to the proposed merger.

Recently, it was reported the Federal Communications Commission (FCC) determined there is no "competitive substitute" for satellite radio. This ruling would appear to be a precursor to the determination a combined Sirius and XM would constitute a monopoly. A combined Sirius and XM would not constitute a monopoly for several, very substantial reasons.

First and most importantly, as an emerging market, the main source of competition satellite radio faces is not just the number of competing firms, but the **ability** of attracting customers who until six years ago did not pay for radio programming. There are no barriers to entry preventing other firms to enter this market, just as **XM** and Sirius did, and if customers were not receiving value, they could simply listen to "free" radio.

Second, because of exclusive contracts signed by both satellite companies, the satellite market essentially **consists** of dual monopolies. As a Sirius subscriber I can enjoy the NFL, NASCAR and English Premier League "Soccer," however, because of the exclusive contract **XM** has with the Atlantic Coast Conference, I cannot listen to Clemson football when I am on the road. Similarly, **XM** subscribers can listen to Major League Baseball, but do not have access to the above mentioned sports. The proposed merger between Sirius and **XM** would provide more listening choices to current subscribers of each service.

Last, and most importantly, despite claims to the contrary, satellite radio does compete with "conventional" fm/am radio. The National Association of Broadcasters' full court press in opposition to the proposed merger is a good indication that "conventional radio" does see satellite radio as competition.

Antitrust laws were created to protect consumers against higher prices and other consequences of monopoly power. Unfortunately, the opposition to the proposed merger is not being driven by consumers, nor is its motivation consumer protection. Simply put, the opposition to the Sirius-XM merger is for no other reason than to stifle an emerging technology that directly challenges "conventional radio."

Unless there is clear evidence of consumer harm, the FCC should not interfere with the market place, as opponents of this merger are proposing.

In 1997, 240 prominent economists, including a former ~~executive~~ director of the Federal Trade Commission issued an open letter to then President Clinton calling for an end to "antitrust protectionism." In their letter, the economist decried the trend of antitrust actions and merger opposition being led by rival business firms.

"Where antitrust authorities respond to these protectionist demands, the workings of the market are short-circuited. Antitrust protectionism means that market decisions about how to compete for consumer's favor are displaced by bureaucratic and political decisions. More of the energies of firms are directed to politics, less to production and innovation.

Successful innovators are penalized, scale economies lost and competition is thwarted, not enhanced."

As with other emerging technologies, satellite radio (and soon to be "back seat satellite TV") consumers have enjoyed continued improvements in radio content, satellite receiver technology and new services. When the Tucker Automobile Company was killed, the American consumer was the ultimate loser. Many of the innovative technologies being offered on the Tucker 48 were not seen by the American consumer for years and in some cases decades.

If consumer protection ~~is~~ truly the main focus of any action by the FCC, or the Department of Justice, the merger could be approved with specific conditions. In the long run, as the combined Sirius-XM becomes profitable and the satellite market continues to grow, additional firms will join the market.

Should the "protectionist" win out and the proposed merger be rejected, the American consumer will once again get "Tukered" and future innovations in radio technology will be lost for who knows how long?

I respectfully request the Sirius-XM unification be given every possible consideration and am hopeful you will approve their application for merger.

Sincerely,



John O'Keefe

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Mr. Mel Karmezan